

Minutes

DVD No. 152

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chambers, 4800 Town Center Drive, at 7:30 P.M., on Monday, October 16, 2006. Mayor Peggy Dunn presided.

Councilmembers present: Scott Gulledge, Gary Bussing, Jim Rawlings, Lou Rasmussen, James Azeltine, and Debra Filla.

Councilmembers absent: Gregory Peppes and Mike Gill.

Staff present:

Scott Lambers, City Administrator
Chief Ben Florance, Fire Department
Major John Meier, Police Department
Kathy Rogers, Finance Director
Joe Johnson, Public Works Director
Eirene Oliphant, Building Official
Mark Klein, Senior Planner
Deb Harper, City Clerk
Jack Reece, IS Specialist

Patty Bennett, City Attorney
Randy Hill, Deputy Fire Chief
Captain Dale Finger, Police Department
Colleen Browne, HR Director
Chris Claxton, P&R Director
Jeff Cantrell, Neighborhood Serv. Admin.
Jeff Joseph, Senior Planner
Christy Wise, Deputy City Clerk

1. PLEDGE OF ALLEGIANCE**2. APPROVAL OF AGENDA**

Mayor Dunn advised Item No. 7G has been continued to the November 6, 2006 Governing Body meeting. A motion to approve the agenda was made by Councilmember Gulledge; seconded by Councilmember Azeltine. The agenda was approved following a unanimous vote of 6-0.

3. CITIZEN COMMENTS

Members of the public are welcome to use this time to make comments about City matters that do not appear on the agenda, or about items that will be considered as part of the consent agenda. It is not appropriate to comment on pending litigation, municipal court matters or personnel issues. Comments about items that appear on the action agenda will be taken as each item is considered. **CITIZENS ARE REQUESTED TO KEEP THEIR COMMENTS UNDER 5 MINUTES.**

Donald Brod, 4323 W. 112th Street, stated he has appeared before the Governing Body at a past meeting regarding the nonexistent handicapped accessible entrances at the AMC Theater in Town Center Plaza.

He and his wife frequent the theater quite often, however are both handicapped and have trouble opening the heavy doors. They have also had this problem at Dick's Sporting Goods.

Building Official Eirene Oliphant stated in accordance with the Americans with Disabilities Act [ADA] and the building code adopted by the City of Leawood, automatic door openers and closures are not required. The only requirement is the doors must be installed not to exceed a maximum force of five pounds. Ms. Oliphant suggested that Mr. Brod contact the Department of Justice with his complaint.

4. PROCLAMATIONS – None.

5. PRESENTATIONS/RECOGNITIONS Presentation of 2005 Life Safety Award by State Fire Marshall Jack Alexander to Leawood Fire Dept.

State Fire Marshall Jack Alexander stated it is an honor and privilege to present the Life Safety Award to Fire Chief Ben Florance, the Leawood Fire Department, and the Leawood community. He commended the fire prevention and education efforts provided by the Fire Department. He noted that for the last 13 years, the Life Safety Award has recognized local fire prevention activities that contribute to reducing the number of lives lost in residential fires. The Leawood Fire Department qualified for the 2005 award because no deaths in structures were recorded during this year. State Fire Marshall Alexander presented the award to Chief Florance on behalf of the Governor of Kansas and the Office of the State Fire Marshall.

Chief Florance accepted the award on behalf of the entire Leawood Fire Department. Introductions were made by B-shift members and Becky Craig, Administrative Assistance to the Fire Department.

Mayor Dunn congratulated Chief Florance for receiving the exceptional award for twelve out of thirteen years and led the crowd in a standing ovation.

On a personal note, Councilmember Azeltine shared he had the unfortunate occasion to call upon 911 over the weekend with the Fire Department responding first to the scene in less than three minutes. He expressed his thanks to the firefighters for putting his family at ease with the quick response.

6. SPECIAL BUSINESS

A. Appointment of Major John Meier as new Police Chief

City Administrator Scott Lambers recommended appointing Major John Meier as the next Chief of Police for the City of Leawood upon the retirement of Police Chief Sid Mitchell on December 8, 2006. A motion to approve the appointment was made by Councilmember Rawlings; seconded by Councilmember Rasmussen. The motion carried following a unanimous vote of 6-0.

Mayor Dunn congratulated Major Meier and stated the City will be pleased to work with him in this new capacity. Major Meier stated he is honored and humbled by the opportunity to oversee the Police Department, which is full of talented and dedicated people. He looks forward to working with personnel on future challenges. Major Meier thanked the Governing Body and introduced his family members present in the audience.

- B. Resolution No. 2662 providing for the issuance by the City of Leawood, Kansas of General Obligation Refunding Bonds, Series 2006-B in the approximate amount of \$6,600,000 to provide funds to refund certain outstanding General Obligation Bonds of the city; authorizing the underwriter to offer the Bonds for sale; and authorizing certain related matters and actions

Finance Director Kathy Rogers explained the purpose of this agenda item is to gain approval for a negotiated sale. The sale will take place during the first meeting in November provided that interest rates remain stable, otherwise the sale will be delayed until rates return to the current status.

A motion to approve the resolution was made by Councilmember Bussing; seconded by Councilmember Rawlings.

Councilmember Bussing thanked Ms. Rogers and Roger Edgar of George K. Baum for providing a savings to taxpayers with their attentiveness to the moving interest rates.

The resolution was approved following a unanimous vote of 6-0.

- C. Discussion of application for a Swim-Spauna to be installed at 11203 Juniper Drive [Applicant: Jack Lashley]

Mr. Lambers informed the application is being brought before the Council due to recent action taken to uphold the current ordinance prohibiting above-ground swimming pools. The applicant is requesting to install a Swim-Spauna, which is a hybrid between a pool, hot tub, and spa. Given the recent decision by the Council, administrative approval could not be given without clarification. Direction is needed as to whether the structure qualifies as a spa under the allowed uses within the City or if the facility constitutes an above-ground swimming pool and falls under the prohibition ordinance.

Applicant Jack Lashley, Jr., 11203 Juniper Drive, distributed informational packets regarding his request, which he stated is not a violation of the intent of the code. He listed the features of the Swim-Spauna and noted how it differs from a swimming pool. The unit will be installed into a covered deck that is attached to the home. Mr. Lashley clarified the length of the hot tub as 14-ft. and 4-inches rather than the incorrectly reported 20-ft.

Mr. Lashley read § 4-1006 of the Code of the City of Leawood into the record and stated according to the language, any individual in possession of a hot tub over 24 inches deep would be in violation of the code:

UNIFORM SWIMMING POOL, SPA, AND HOT TUB CODE AMENDED:
SECTION 202.1, ADDED DEFINITION OF SWIMMING POOL, FURTHER
DEFINED. Swimming Pool, private or public, is any manmade structure
intended for swimming or recreational bathing that contains water over 24 inches
deep. This includes in-ground swimming pools, hot tubs, and spas. (Note:
Aboveground or on-ground swimming pools are not permitted).

The applicant explained the unit will provide needed health benefits to him in terms of therapy for his arthritis and knee problems. He informed surrounding neighbors have given consent to the structure as evidenced in supplied documents.

Mayor Dunn confirmed with Mr. Lashley that a 4-ft. fence is currently around his backyard. He informed of future plans to cost-share with a neighbor to install a 6-ft. fence. The hot tub unit itself will be surrounded by railing with locking gates.

Councilmember Bussing encouraged Mr. Lashley to obtain plan approval from the Leawood Country Manor Homes Association. It was confirmed that the existing deck on the home will be removed and replaced with a wider covered deck.

Councilmember Bussing asked if clarification should be incorporated into the current ordinance. Mr. Lambers stated the content of the application triggered the request for direction as it refers to the unit as a mini-pool and states it is, "Fantastic for swimming, relaxing, playing with family, children, and friends; diving optional." Guidance is needed as to what qualifies an aquatic device as a spa and when does it become a pool. He recommended using size as a determining factor. Mr. Lambers elaborated that the application is being presented to Council in order to prevent future liability to the City in the event that an administrative approval to allow the structure was followed by a determination that it is in fact a pool with removal required. The decision made tonight will be used as a benchmark for future applications.

Councilmember Rawlings stated the marketing information for the Swim-Spauna leads one to believe it would be possible to swim in the unit. He agreed that clarification is needed within the ordinance. Mr. Lambers stated the ordinance is intended to allow kiddie-pools under 24-inches in height without a permit, prohibit above-ground pools greater than 24-inches, and allow hot tubs and spas. The question is whether to classify the Swim-Spauna as a spa or a pool. The latter would be prohibited as the unit is clearly greater than 24-inches and above ground.

A motion to approve the applicant's request to install the Swim-Spauna was made by Councilmember Gullledge. He stated the unit should not be considered an outdoor pool and falls within the current ordinance. The motion was seconded by Councilmember Bussing.

Councilmember Rasmussen commented that by the company's own definition, the structure is an above-ground pool with descriptions of "swimming spa" and "mini-pool."

Mayor Dunn verified with Mr. Lashley the depth of the unit is 4-ft.

Councilmember Bussing viewed the ordinance as attempting to address detached structures such as large aboveground swimming pools, which are prohibited, rather than the act of swimming. He seconded the motion because the entity will structurally be part of Mr. Lashley's home and is consistent with the ordinance. The clarity that needs to occur within the ordinance through additional discussion relates to aboveground pools and spas that are detached. The current ordinance is silent regarding such language.

Mayor Dunn noted that prior conversation on the subject raised concerns about decking placed around freestanding pools. She agreed with Mr. Lambers' decision to bring the issue before the Governing Body.

Councilmember Filla stated she considers the unit a spa as it is a heated single unit with jets. She expressed appreciation to the applicant for including the locking gate safety feature around the body of water, as this was another point of concern during discussion of aboveground pools. She stated the unit should be included under the classification of a spa for reasons that have been discussed.

Councilmember Gullede pointed out the manufacturer is trying to sell the product based upon multiple uses, thus the mini-pool description; however, it is not large enough to swim laps in and should be considered a spa.

Councilmembers Rasmussen and Gullede discussed the large size of the spa.

Councilmember Azeltine stated the swimming and rowing possibilities referenced in the brochure are simulated activities. He agreed the ordinance should be polished and stated his intent to vote in favor of the motion.

Mayor Dunn confirmed with Mr. Lambers that the permit would not fall under the recently passed ordinance requiring notification to homeowners associations [HOAs]. This particular ordinance pertains to residential structures rather than decks; however, Mr. Lashley's plans may be subject to his individual HOA. Mayor Dunn further urged Mr. Lashley to investigate the matter prior to beginning construction.

Councilmember Rawlings asked what type of direction should be given in order to prevent future applications from coming to the Council level. Mr. Lambers stated approval of this application will set precedent and be used as guidance for future administrative reviews. He stated the ordinance can be amended accordingly based upon any limitation the Governing Body would like to place upon the definition of a spa.

Councilmember Azeltine reiterated the need for the ordinance to contain language addressing the detached structure issue.

Mayor Dunn encouraged Mr. Lambers to bring further items before the Governing Body when there is doubt of proper administrative approval.

Councilmember Rasmussen stated he would like to place a limit on the length of future spa applications.

Mayor Dunn suggested action be taken on the current application with amendments to the ordinance discussed at a future meeting. Mr. Lambers noted that approval of Mr. Lashley's application will set a 15-ft. length limit. Language can be added to the ordinance with a desired length limitation and attachment requirement.

Councilmember Filla added the fact that the unit is self-contained rather than having separate and external mechanical parts influenced her decision to classify the structure as a spa rather than a swimming pool.

The motion to approve the application for the Swim-Spauna carried following a unanimous vote of 6-0.

7. **CONSENT AGENDA**

Consent agenda items have been studied by the Governing Body and determined to be routine enough to be acted on in a single motion. If a Councilmember requests a separate discussion on an item, it can be removed from the consent agenda for further consideration.

- A. Accept Appropriation Ordinance Nos. 1060B, and 1061A
- B. Accept Minutes of the October 2, 2006 Governing Body meeting
- C. Accept Minutes of the October 4, 2006 Public Works Committee Meeting
- D. Accept Minutes of the August 24, 2006 Ironhorse Advisory Board meeting
- E. Accept Minutes of the July 25, 2006 Arts Council meeting
- F. Acceptance of 2007 renewal of Health and Dental Insurance Benefits for City employees
- G. Approve Change Order No. 2 in the amount of \$77,946.50 to Miller Paving Company, pertaining to the 2005 Street Reconstruction Project – **Continued to the November 6, 2006 Governing Body meeting**

- H. Resolution No. 2663 approving and authorizing the Mayor to execute a Construction Agreement between the City and Kincaid Construction in the amount of \$267,580.45, pertaining to the Town Center Drive Storm Sewer Improvement Project [CIP # 196]
- I. Resolution No. 2664 approving and authorizing the Mayor to execute a Construction Agreement between the City and Pyramid Contractors, Inc. in the amount of \$89,436.00, pertaining to the 2006 Storm Sewer Project non-SMAC Project at Cherokee Lane and 9800 blk. of Wenonga Road
- J. Resolution No. 2665 approving and authorizing the Mayor to execute Amendment No. 2 to that certain Consulting Engineer Agreement dated July 18, 2005, between the City and Continental Consulting Engineers for an amount not to exceed \$25,000, pertaining to the Villaggio Development [CIP # 198]
- K. Resolution No. 2666 to approve Inter-local Agreement between the City of Leawood and the Board of County Commissioners of Johnson County, Kansas, the City of Overland Park, Kansas for the public improvements to Nall Avenue, 143rd to 159th Street [CIP 80143]
- L. Resolution No. 2667 accepting Storm Sewer Easements from Park Place Developers, LLC [a/k/a Place Partners, LLC] pertaining to property located on Town Center Drive
- M. Resolution No. 2668 accepting Temporary Construction Easements from Baptist Foundation of Kansas City, Lot 2 Grace Gardens; Baptist Senior Ministries, Inc., d/b/a Grace Gardens Villas, Lot 2 Grace Gardens; Michael W. Reeder and Amy E. Reeder, 5417 W. 153rd Street; Allen B. Pease, 15200 Birch; Nall Valley, LLC, a Kansas Limited Liability Company; and Lot 1 Nall Valley Shops, pertaining to the Nall Avenue Improvement Project; 143rd to 159th Street [CIP 80143]
- N. Resolution No. 2669 accepting a Permanent Gas Line Easement from Baptist Senior Ministries, Inc. d/b/a Grace Gardens Villas, Lot 2 Grace Gardens pertaining to the Nall Avenue Improvement Project; 143rd to 159th Street [CIP 80143]
- O. Fire Department Monthly Report
- P. Municipal Court Monthly Report
- Q. Police Department Monthly Report
- R. Resolution No. 2670 approving and authorizing the Mayor to execute a Professional Services Agreement between the City and Orion Management Solutions pertaining to the management of IRONHORSE Golf Facility, located at 15400 Mission Road

Mayor Dunn stated she would like to pull Item Nos. 7C and 7M for discussion. On motion of Councilmember Filla, seconded by Councilmember Azeltine, the remainder of the Consent Agenda was approved following a unanimous vote of 6-0.

7C. Accept Minutes of the October 4, 2006 Public Works Committee Meeting

Mayor Dunn stated she pulled this item in order to allow Council the opportunity to adopt or reject the Public Works Committee's recommendation regarding the use of pervious concrete.

Councilmember Rasmussen, Chair of the Public Works Committee, reported the recommendation is to utilize pervious concrete for the parking lot at I-Lan Park on an experimental basis. There has been great success with the material in areas such as South Carolina, however the Midwest tends to have colder temperatures that may not be agreeable to this type of concrete. He explained that rain and melted snow will filter through rather than run off of the material. The surface of the pavement will not have a fine finish as seen with regular cement. Although there is concern of failure due to possible freezing conditions in the Kansas City area, the Public Works Committee feels the experiment is worth the risk. Councilmember Rasmussen stated the City should try any measure that encourages ground absorption of water to alleviate water flow throughout the City. Due to weather unpredictability, it may take a superior amount of time to determine if the concrete will withstand the climate in this area. A characteristic of this region that is absent in South Carolina is the subjectivity of dust from the West, which could plug the pervious concrete and require additional maintenance. The concrete company is willing to defer the cost difference between the pervious concrete and standard asphalt.

A motion to approve the recommendation of the Public Works Committee to use pervious concrete in the parking lot and walkways of I-Lan Park was made by Councilmember Rasmussen; seconded by Councilmember Filla.

Councilmember Filla noted there is also a location in Pennsylvania where the material has been used. She commended Public Works Director Joe Johnson for negotiating with the vendor to bring forth a proposal of equivalent cost.

The motion was approved following a unanimous vote of 6-0.

A motion to accept Item No. 7C was made by Councilmember Rasmussen; seconded by Councilmember Azeltine. The motion carried following a unanimous vote of 6-0.

- 7M. Resolution No. 2668 accepting Temporary Construction Easements from Baptist Foundation of Kansas City, Lot 2 Grace Gardens; Baptist Senior Ministries, Inc., d/b/a Grace Gardens Villas, Lot 2 Grace Gardens; Michael W. Reeder and Amy E. Reeder, 5417 W. 153rd Street; Allen B. Pease, 15200 Birch; Nall Valley, LLC, a Kansas Limited Liability Company; and Lot 1 Nall Valley Shops, pertaining to the Nall Avenue Improvement Project; 143rd to 159th Street [CIP 80143]

Mr. Johnson noted the packet material contains an omission of the dollar amount in the temporary construction easement for Nall Valley, LLC. The amount is \$2,050, which is consistent with the evaluation of the land appraiser hired by the City.

A motion to approve the resolution was made by Councilmember Rawlings; seconded by Councilmember Filla. The resolution was approved following a unanimous vote of 6-0.

8. MAYOR'S REPORT

- A. Attended a Council of Mayors meeting, where the group participated in an activity at the shooting range in the Edwardsville community. The shooting range is utilized by a number of northeast Johnson County police departments. The Chief of Police from Fairway and some of his officers provided training to the participants on how to shoot the automatics, revolvers, and rifles. Following the team-building exercise, a presentation was given by Johnson County Commissioner David Lindstrom, Mike Meadors of the Johnson County Parks & Recreation District, and Kevin Gray of the Greater Kansas City Sports Commission and Foundation regarding the Johnson County Soccer Park ballot question. They distributed informational material of frequently asked questions, which was copied and included in the agenda packets.
- B. Mayor Dunn noted an editorial from the October 9, 2006 issue of *The Kansas City Star*, "Vote yes for justice center in Leawood," regarding the upcoming referendum on the four-tenths of a cent (.4) sales tax opportunity as a funding mechanism for the future Justice Center site. The article was also included in agenda packets.
- C. Presented remarks about the City of Leawood as guest speaker for two dynamic groups: The Central Exchange at their south location on College Boulevard and New Friends of Kansas City at the Leawood South Country Club.
- D. Attended the National Day Celebration for the Taipei Economic and Cultural Office in Kansas City at the Hyatt Regency. Councilmembers Filla, Rasmussen, and Rawlings were present at the event along with Congressman Dennis Moore, Congressman Emanuel Cleaver, Kansas City Mayor Kay Barnes, and many other dignitaries. Congratulations were given to Director General Jack Chen for the wonderful and successful celebration.
- E. Attended the Meet the Artists reception held prior to this evening's meeting in the lobby of City Hall for two Kansas City Art Institute students who are participating in the "art on loan" program. Tex Jernigan is the artist of "The Sentinel," which adorns the median in front of City Hall and Reilly Hoffman is the creator of "Anagenisi apo Koinonia," which stands in the lobby. Mayor Dunn expressed appreciation to Chair Ann Kenney of the Art in Public Places Initiative, Chair Mary Tearney of the Leawood Arts Council, Cultural Arts Coordinator April Bishop, Parks & Recreation Director Chris Claxton, and all others responsible for organizing the reception. She noted public art to be one of the many things that sets Leawood apart from other communities.
- F. Congratulated Norm Cass and Chris Skaggs, members of the Fleet Maintenance Division of the Public Works Department, who went above and beyond the call of duty by working late to make repairs to Fire Truck No. 32. The maintenance was needed in order to keep this piece of equipment operational. Mayor Dunn thanked Fire Chief Ben Florance for calling their appreciable efforts to her attention.

Additionally, Chris Skaggs finished sixth in the annual American Public Works Association's Snow Exposition Mechanic Competition. This is the annual event in which technicians from both states and around the metro area compete in a series of hands-on and written tests for their knowledge and proficiency. Mr. Skaggs has done very well for the last seven years. Mayor Dunn congratulated Mr. Skaggs and Public Works Director Joe Johnson for the recognition.

9. COUNCILMEMBERS' REPORT

Councilmember Rasmussen's report on the Public Works Committee recommendation regarding the Brookwood School sidewalk issue located on 103rd Street between Wenonga Road and Mohawk. The recommendation is to establish a sub-committee to review the traffic/sidewalk safety concerns along 103rd Street.

Staff Comment: It is the position of the City Administrator that this should be considered by the entire Governing Body at a future work session.

Referring to the minutes from the Public Works Committee meeting, Councilmember Rasmussen stated the following is the correct recommendation from the Public Works Committee:

Michael DeMent motioned that the committee recommend to the City Council that the City provide a staff/committee liaison to support the school and homeowners if they are interested in exploring this issue. The Public Works Committee wants to make sure there are a significant number of homeowners willing to commit to this issue rather than one person's complaint.

Councilmember Rasmussen informed 103rd Street is scheduled to be repaved in 2009 under the Residential Street Rehabilitation Program. The limited right-of-way along 103rd Street accounts for the "squeezing-in" placement of the utilities and sidewalks to Brookwood School. Accommodating the citizen who brought the issue to the Governing Body's attention would require relocating the sidewalks from State Line Road up to Howe Drive. It is not necessary to include Howe Drive as it is part of the Saddlewood subdivision, which was platted at a later date with larger right-of-way areas and sidewalks that do not meet the curb. The estimated cost to relocate the sidewalks in 2009 is \$1-million.

The Public Works Committee would like assurance of community interest before establishing a subcommittee to investigate the issue. Communication between the PTA and principal of Brookwood School revealed alternative suggestions such as staggering school hours to improve vehicular and pedestrian access. Considering the limited right-of-way, affect the relocation would have upon property owners along 103rd Street, and the significant cost, it was felt that more citizen input is needed in order to take further action.

Mayor Dunn stated the Work Session recommended by the City Administrator will not be considered unless it is warranted contingent upon further updates from the Public Works Committee. Mr. Lambers agreed with this course of action.

Councilmember Filla clarified that Governing Body participation will be needed only if there is enough community interest to form a multifaceted committee to include members of the school board and PTA, homeowners, and representatives of the City Council and Public Works Committee.

10. STAFF REPORT – None.

COMMITTEE RECOMMENDATIONS

11. PLANNING COMMISSION

[from the September 26, 2006 Planning Commission meeting]

- A. Ordinance No. 2185 approving a Special Use Permit [SUP] for Town Village of Leawood, located at 4400 W. 115th Street [Roll Call Vote]

Mr. Lambers reviewed a request to amend the Leawood Development Ordinance [LDO] to allow all SUPs to run with the land for an unlimited timeframe was recently denied by the Governing Body. The applicant is requesting transferability of ownership and an unlimited duration for this specific SUP.

Applicant Greg Musil, 9225 Indian Creek Parkway, Overland Park, stated the original SUP for this property was granted in 1998 and contains an indefinite time period but does not allow transferability of ownership. He requested the addition of a stipulation allowing the SUP for Town Village of Leawood to run with the land. There will be no changes to the use, configuration, or landscaping of the development. He reported no concerns were raised at the Interact meeting.

Councilmember Rasmussen asked why the standard 20-year timeframe was not acceptable. Mr. Musil stated from an investment standpoint, any property owner would like the opportunity to transfer the SUP in the marketplace when the time is right for a fair market value sale. A 20-year SUP restricts the length of available mortgage and marketability of the project.

Discussion took place regarding possible action taken by the Council if ever the intended use of an SUP is violated. Councilmember Rasmussen expressed concern with allowing an unlimited time period.

A motion to approve the Special Use Permit [SUP] for Town Village of Leawood, located at 4400 W. 115th Street, was made by Councilmember Gullede; seconded by Councilmember Azeltine.

The ordinance passed with the following roll call vote of 5-1: Yea: Councilmembers Azeltine, Filla, Rawlings, Bussing, and Gullede. Nay: Councilmember Rasmussen. (Councilmembers Gill and Peppes absent).

- B. Resolution No. 2671 approving a Final Site Plan for Siena - Lot 32 Cabana/Pool house, located at 3716 W. 140th Street

Architect Scott Bickford, 8600 W. 110th Street, Overland Park, offered a letter from the property owner stating the cabana would not be used as a residence.

Mr. Lambers stated the Planning Commission held a lengthy discussion regarding this issue. There has been a gradual creep in the size of cabanas with more elaborate structures being built. Some are not in proximity of a swimming pool and contain full bathrooms, kitchens, bedrooms, fireplaces, and bars. The Planning Commission is recommending approval of this application; however, Staff intends to specifically define the traditional use of a cabana as an open-air outdoor facility that may have a half-bath and be in close proximity to a pool. There will be very strict guidelines that Staff can apply to future applications. If future applications are beyond the guidelines, the property owner will have to apply for an SUP. There is concern the cabanas are becoming second dwellings on the property, which is clearly not allowed. Once the structures are built, unless there is a complaint, there is no way to know if they are being used for a residence, home occupation, etc. The letter from the applicant stating the cabana will not be used as a residence will allow the City to revoke the certificate of occupancy for the structure if the condition is violated.

Councilmember Rasmussen stated the conversion of a cabana into a residential unit has occurred in the past in areas of north Leawood. He asked if it were possible to include the restriction as a covenant running with the land so that future property owners realize the cabana is not be used as a “nanny house” or “housekeeper’s quarters.” Mr. Lambers agreed with this suggestion.

Noting the proposed cabana could easily be attached to the home, Councilmember Filla requested feedback referencing scale and massing criteria. Mr. Lambers stated the major concern is two living units on a single lot. If the cabana were attached, it would be considered part of home and not a separate structure. The focus of discussion should center on the definition of a pool house/cabana.

Councilmember Azeltine asked if the definition should occur prior to approving tonight’s application. Mr. Lambers informed the Planning Commission recommended approval due to the large lot size with a rationale that the structure will not be used as a second living unit. The goal is to quickly change the definition to use as a guideline for future applications. Other possible applications for cabanas of this scale can be placed on hold until the amendment process is complete. Approval of the current application will not set precedent.

Mr. Bickford verified the home is 10,000 square feet of finished living space.

Mayor Dunn agreed with the suggestion of an additional stipulation to include the restriction as a covenant running with the land.

Commenting on Councilmember Filla's question regarding scale and massing, Councilmember Rasmussen explained that increasing the density of the land once it has been zoned raises issues related to sewer, water, run-off, and traffic requirements. It is not in the long-term best interests of the citizens to change the planned occupation of land.

A motion to approve the final site plan located at 3716 W. 140th Street with the addition of a third stipulation to include a restrictive covenant running with the land prohibiting the pool house/cabana from being used as a permanent residential unit was made by Councilmember Gullede; seconded by Councilmember Azeltine.

City Clerk Deb Harper clarified with Mayor Dunn that the stipulation is to be included in the resolution. It was determined that the addition will override the Planning Commission's recommendations and will require six votes for approval.

Stating discomfort with approving the resolution, Councilmember Bussing asked if there were alternatives other than a remand. Mr. Lambers stated specific criteria could be outlined, one of which would be restricting the use of the structure as a residence. If the application does not meet the definition of a cabana, it would require an SUP. The SUP process would provide the vehicle to hold a public hearing if it were determined that the cabana was not being used for intended purposes. The action of placing the restriction in the title affords the City a safeguard to revoke the SUP. The proposed motion will require revoking the certificate of occupancy. Mr. Lambers stated the SUP is a stronger mechanism to preclude the structure from being used as residence; however, the additional stipulation in the motion will provide the City with sufficient leverage to enforce the restriction.

Discussion took place regarding the intended definition of cabana. Councilmember Azeltine stated this is another instance where lack of clarity in the LDO needs correction. He agreed with the density concerns expressed by Councilmember Rasmussen but is in favor of approving the request as the applicant should not have to pay the price for shortcomings within the ordinance.

The motion was approved following a vote of 6-1 with Mayor Dunn voting in the affirmative (Nay: Councilmember Bussing).

- C. Resolution No. 2672 approving a Revised Final Site Plan for Waterway Gas and Wash, located at 4200 W. 119th Street

Marvin Rainey, Esq., 7400 W. 110th Street, Overland Park, representative of Waterway Gas and Wash, stated there will be no modification to the building. The request is to relocate the vacuum stations from the entrance to the exit of the wash tunnel in order to create a more efficient operation.

Councilmember Rasmussen disclosed that Mr. Rainey, who also represented the applicant at the time of original approval on January 3, 1995, signed his application to become a lawyer. Mr. Rainey confirmed that Mr. Dubinski is still the principal owner of the business. Councilmember Rasmussen recalled the original approval for this site was dependent upon assurance from the owner, whose wife is a gardener, that there would be a substantial amount of plantings and be in accordance with the then Leawood Development Ordinance. The owners have kept their word. He suggested adding a stipulation to the current application to once again assure substantial plantings and landscaping.

A motion to approve the resolution with the addition of a stipulation requiring substantial plantings and landscaping was made by Councilmember Rasmussen; seconded by Councilmember Filla.

Mr. Rainey verified for Councilmember Bussing that the vacuum pumps will be external and set into the retaining wall on the west bank with enclosure on three sides by an 8-ft. wall. The hoses from the vacuums will run from the retaining wall area to the exit of the wash tunnel through buried pipes and rest in vertical standing pipes between the four lanes. Mr. Rainey stated agreement to the additional landscaping.

Site plan drawings and photographs of the vacuum stations were displayed. Regarding the material used on the screening wall, Senior Planner Jeff Joseph informed he has advised the applicant to use brick inlays or facades on the concrete retaining wall.

Mayor Dunn suggested additional landscaping in the proposed patio area.

Mr. Rainey noted there may be a delay in starting the project due to obtaining needed sidewalk easements.

Councilmember Rasmussen quoted a section of the January 3, 1995, Governing Body minutes:

“Councilmember Rasmussen was concerned about keeping Tomahawk Creek Parkway looking like a parkway; a substantial amount of plantings around the car wash would help retain the parkway look.”

He stated the proposed resolution contains no direction regarding landscaping to the site and reiterated the need to add such a stipulation.

Mayor Dunn advised the added stipulation will once again override the Planning Commission's recommendations and require six votes.

The resolution with the added stipulation to augment the landscaping in accordance with the filing and per Staff recommendations was approved following a unanimous vote of 6-0.

- D. Ordinance No. 2186 approving a rezoning from SD-NCR [Planned Neighborhood Retail] to SD-CR [Planned General Retail], a Revised Preliminary Site Plan and a Final Site Plan for Ironhorse Centre, located on the southeast corner of 151st Street and Nall Ave [Roll Call Vote]
- E. Ordinance No. 2187 approving a Special Use Permit [SUP] for Ironhorse Centre Lot 8, for a restaurant drive-thru located on the southeast corner of 151st Street and Nall Avenue [Roll Call Vote]

Curtis Holland with Polsinelli, Shalton, et al., representing applicants Richard Napper and Fred Merrill, stated there are several applications to consider. The rezoning and SUP application concerns Lot No. 8 of the development and is needed to allow a drive-thru for the planned tenant of the building, Latté Land. Via site plan drawings, Mr. Holland pointed out the building in the northeast corner of the project. He provided a brief history of the development to Ironhorse Centre. He asked the Governing Body to equate the request to the approved shopping center to the north, which also contains a drive-thru.

Additionally, there is a revised preliminary site plan and a final site plan relative to buildings on Lot Nos. 3 and 4. Mr. Holland informed at the time building materials were assembled on site, Staff noticed a slight difference in color from buildings on Lot Nos. 1 and 2. The application stems from Staff's concern that the materials are not consistent with what was approved by Council. It is of the applicant's opinion that the materials the alike, however the hue appears different due to how the stones were assembled on the building. Mr. Holland noted the building materials and colors are in the original pallet and were approved as part of the shopping center design guidelines. He requested formal approval of the materials.

Mr. Holland reported the Planning Commission recommended unanimous approval for all of the applications. Although there is agreement to all stipulations, there is one point of discussion relating to Stipulation No. 18 concerning the trash enclosures. Staff has required that trash enclosures for the remainder of the project be directly attached to the buildings. This stipulation will conflict with the unique fashion the developer plans to address this feature for the drive-thru on Lot No. 8. It was planned to extend the roofline from the building over the drive-thru lanes with vertical attachment to the ground. The trash enclosures will connect with the vertical attachment and will be completely walled off. They will be architecturally attached to the building via the roof. Staff has reworded the stipulation of the original approval from the trash enclosures being architecturally attached to directly attached to the buildings. Mr. Holland stated none of the four existing buildings on the site have trash enclosures that are directly attached. He requested consideration for maintaining the trash enclosure stipulation as it was originally approved. The site does not lend itself to easily creating trash enclosures directly attached to the buildings.

Mr. Holland provided an elevation demonstrating the proposed trash enclosure for the drive-thru coffee shop. He added the enclosure will also serve as screening for utility meters. The material for the door to the enclosure is a decorative painted metal and will be installed on the front of the structure.

Councilmember Bussing requested Staff's perspective on the revised wording of the trash enclosure stipulation. He also asked for explanation of the Staff comment requesting guidance from the Planning Commission regarding the revised final site plan.

Mr. Lambers stated the Governing Body has adopted a policy in which trash enclosures should be attached to buildings and did not feel it was appropriate to provide a blanket exception to this guideline when other applicants have taken steps to meet the requirement. The Staff comment pertains to the front monument sign, which is not consistent with the materials of the building. The east sign follows the exact pattern of the building while the front sign does not. The minutes from this case reveals concerns expressed by Planning Commissioner Len Williams as, "there is a lot of debate about monument signs in every project that comes through and it has always been an issue that we have some consistency with the signs and if they are going to change the color of stone, change the style and color of the lettering, we are setting a precedent (that this connection does not need to be made)." Mr. Lambers stated the applicant's argument is correct in that the stone in the sign is on the building; however, Staff's position is that it does not follow the pattern of other signs on the site. A photograph of the sign in question was distributed to the Governing Body.

Councilmember Bussing asked if the significant artwork installed on the land by Mr. Merrill, to his own accord, has been referenced in terms of bonuses for amenities. Mr. Lambers stated bonuses were not needed for this project. Councilmember Bussing suggested recognizing the property owner's public art contribution as an offset for the trash enclosure of the drive-thru, which could be referenced as a one time exception so as not to undermine the earlier described ordinance.

Mayor Dunn noted that Stipulation No. 18 accomplishes this suggestion by describing the term "directly attached" and stating, "With the exception that the proposed trash enclosure on building 8 is acceptable in concept."

Mr. Lambers stated there is no basis for this reasoning other than the Planning Commission deems it acceptable. Given the position and visibility of the structure, it will clearly be a trash enclosure to approaching individuals. The artwork will not distract from what the enclosure is being used for. He reminded that the applicant is requesting detached enclosures for all remaining buildings. It is Staff's position that an effort should be made by the developer to attach the enclosures.

Mr. Holland clarified there is no ordinance in the code requiring that trash enclosures be directly connected to the building, only stipulations have been made to separate development projects. He read Stipulation No. 18 as, "All trash enclosures must be screened from public view with a 6-ft. solid masonry structure to match the materials used in the buildings and shall be architecturally attached to the buildings." The same statement is within the approved design guidelines. He also clarified the request as the allowance of indirectly attached trash enclosures for Building No. 8 and three other buildings yet to be constructed on the development site.

Mayor Dunn agreed an exception should be considered for Building No. 8 since it is a planned drive-thru business but did not agree that all remaining buildings in Ironhorse Centre should be excluded from the stipulation. She stated the approved guidelines and recent stipulation may have the same intent in spite of the language differences due to the choice of wording by the former Planning Director. Trash enclosures sharing a common wall with the building have been consistently required with very few exceptions given by the Governing Body.

Mr. Holland stated there is no reason to believe that details of the other buildings cannot be worked out with Staff upon final building approval. Regarding the monument sign, he noted the Planning Commission approved the requested changes that were made in order to accent one of the complimentary pieces of artwork being supplied by Mr. Merrill. Mr. Holland explained the color of the letters on the monument sign were changed to match a bronze-colored sculpture of a girl on a horse, which he displayed on the overhead. It was felt the lettering stood out better against the darker stone versus the pattern of those seen along 151st Street. The sculpture will be placed alongside the monument sign.

Councilmember Bussing stated he is greatly appreciative of the difficult job Staff has of interpreting less than completely clear ordinances; however, it is his belief that the ordinances are intended to be guidelines rather than strictures. He remarked on the beauty of the project. Given the contributions of Mr. Merrill in providing a first-class development and directing his staff to work closely with the IRONHORSE Advisory Board, Councilmember Bussing recommended providing exceptions to the strict interpretation of the ordinances regarding trash enclosures and monument signs.

A motion to approve Item No. 11D with recommendations from the Planning Commission directing Staff to work with the developer in allowing the architecturally attached trash enclosure for Building No. 8 and to allow the requested changes in the monument sign was made by Councilmember Bussing; seconded by Councilmember Rasmussen.

Councilmember Bussing stated the intent of the Leawood Arts Council/Arts in Public Places Initiative and the public art impact fee is to encourage developers to enhance their property with beautiful pieces of art. Mr. Merrill has led the way in his development at Ironhorse Centre and should be rewarded for his expense, time, and effort to do so.

Councilmember Azeltine confirmed with Mr. Holland that the Staff Report is consistent with the recommendations from the Planning Commission.

The ordinance passed with the following roll call vote of 6-0: Yea: Councilmembers Azeltine, Rasmussen, Bussing, Rawlings, Filla, and Gulledge. Nay: None. (Councilmembers Gill and Peppes absent).

A motion to approve Item No. 11E was made by Councilmember Bussing; seconded by Councilmember Rawlings. The ordinance passed with the following roll call vote of 6-0: Yea: Councilmembers Gulledge, Filla, Azeltine, Rasmussen, Bussing, and Rawlings. Nay: None. (Councilmembers Gill and Peppes absent).

12. OLD BUSINESS – None.

13. NEW BUSINESS - None.

14. OTHER BUSINESS

- A. Schedule an Executive Session immediately following the Governing Body meeting to discuss matters related to the attorney-client privilege

A motion to approve the scheduling an Executive Session immediately following the Governing Body meeting to discuss matters related to the attorney-client privilege for a period of 15 minutes was made by Councilmember Filla; seconded by Councilmember Azeltine. The motion carried following a unanimous vote of 6-0.

The Governing Body recessed into Executive Session at 10:10 P.M.

The Governing Body reconvened into regular session at 10:25 P.M.

A motion to approve condemnation with assessment of homeowners on Ironhorse Golf Course SMAC project was made by Councilmember Rasmussen; seconded by Councilmember Bussing.

A motion to adjourn the regular session was made by Councilmember Azeltine; seconded by Councilmember Rasmussen.

ADJOURN

The Governing Body meeting adjourned at 10:30 P.M.

Debra Harper, CMC, City Clerk

Christy Wise
Recording Deputy City Clerk